S.B.Civil First Appeal No.119/82
Har Das Vs. Mani Ram

Date of order : 19.01.2007

HON'BLE MR. BHAGWATI PRASAD, J.

Mr. J.L. Purohit for the appellant.
Mr. Sanjeev Sharma for the respondents.

Heard learned counsel for the parties.

The present appeal has been filed by the appellant Har Das wherein he has challenged the order passed by the Addl. District Judge NO. 2 Hanumangarh passed in suit No. 19/82 on 22.10.1982. The suit was filed by the defendant respondent in the trial court alleging interalia that the appellant defendant executed an agreement in his favour for above 7 bigha of land on 25.8.1978.

The sale money was paid on that day itself and possession was handed over to the plaintiff respondent. In the agreement this was agreed that as soon as the land will be cleared from the department, the sale deed will be executed and in case of failure of the appellant defendant, he will pay compensation to the same as compensation. The appellant defendant continue to avoid the execution of sale. Ultimately, the plaintiff gave a notice and in response to the notice

dated 26.3.1979, a reply was given by the appellant defendant that he had not entered into any agreement, in fact he had taken loan form the plaintiff respondent and in consideration thereto, the agreement was written. It was not really intention of the parties to enter into any agreement. Meanwhile, the defendant paid half of the amount i.e. Rs.8,000/-. The plaintiff respondent toured out the paper saying that the same is the agreement. Alleging that the defendant appellant has turned down his request for execution of the sale deed, the present suit was filed. On the basis of pleadings 9 issues were settled. They are as under:

> "(1)आया मुदई आराजी मुतदाविया निस्बत डिग्री तकमील मुख्तय मुदायह बैय पाने का अधिकारी है ?
> (2) आया वादी संविदा की विनिर्दिष्ट पालना के लिए सदैव तत्पर व इच्छुक रहा है ?
> (3) आया डिग्री तकमील मुकदमा न मिलने की सूरत में मुदई 16000/- पेशी व 16000/- बतौर हरजाना कुल 32000/- की डिग्री पाने का अधिकारी है ?
> (4) आया दावा मियाद बाहर है ?
> (5) आया मुदायला ने मुदई के हक में आराजी मुतदाविया को बैय करने का सौदा नहीं किया और 16000/- रू. ता. 25.8.72 को बतौर कीमत आराजी मुदई से वसूल नहीं किए बल्कि मुताबिक बयान दफा 10 अर्जीदावा मुदायला ने मुदई से उक्त तारीख

को 16000/- कर्ज लिए थे और इकरारनामा बैय आराजी मुतदाविया उक्त कर्जा बाबत मुदई की दिखजमी के लिए मुदायला ने तहरीर तकमील आराजी मुतदाविया उक्त कर्जा मेरे मुदई को काश्त के लिए दी ?

(6) आया मुदायला ने मुताबिक बयान दफा 11 जबाबदावा फसल का हिसाब कर कुल कर्जा की अदायगी मुकदमा में कर दी और रसीद मांगने पर मुदई ने मुदायला बैय जैसे लिखे अन्य दस्तावेज को मुदायला बैय बतलाकर मुदायला के सामने फाड़ दिया ? यदि किया है तो दावा पर क्या असर है ?

(7) आया बिना साक्ष्य अधिकारी की स्वीकृति के आराजी मुतदाविया नहीं बेची जा सकती इसलिए मुदायला बैय unenforciable. है?

(8) आया मुताबिक दफा 13 जबाबदावा खारिज इखराजी है ?

(9) दादरसी ।"

Deciding issue No. 2, the trial court held that the execution of the agreement and giving of notice is proved. This has also not been established that after receiving the clearance papers of land, information was communicated to the plaintiff by defendant is not established. The trial court has come to the conclusion that it is established that the plaintiff was always ready and willing to get the agreement executed. In that background issue no. 2 was decided in favour of the plaintiff. Issue No. 4 which relates to the fact that whether there was any question of limitation, it has been held by the

trial court that after execution of the document, the issuance of notice on 3.3.1979 and its reply dated 26.3.1979 is established. In reply, the appellant has refused to execute the sale deed and in this background after having receiving the refusal on 26.3.1979, the cause of action accrued to the plaintiff and after the refusal suit was filed on 4.5.1979. Thus, the trial court has held that the suit is within limitation.

The alleged payment of Rs. 8,000/- is not being found to be established and in this background, the issue No. 4 was held proved against the defendant /appellant. Issue No. 5 regarding the nature of transaction also has been held against the appellant and payment of Rs. 8000/- is not found to be established and, therefore, the agreement has been found to has been written on the consideration of Rs. 16,000/-. It has also been found that the possession was handed over to the plaintiff in terms of Ex. /1 for a consideration of Rs. 16,000/-. Since the time was not the essence of the agreement, therefore, from refusal, the limitation started.

As regards the nature of the agreement except oral evidence, nothing was there to conclude that the same was not true. It has come on record that anything else was the requirement of the agreement, thus, issue No. 5 has been held against the appellant. Issue No. 7

regarding impediment in sale has not been found to be established because no document has been filed by the appellant and thus, the finding of issue No. 7 has also been recorded against the defendant appellant. Issue No. 9 has also been held in favour of the plaintiff that he was always ready and willing to get the contract performed and it has clearly come in the para 3 of the plaint. Except this statement, what is required has not been contended by the defendant appellant and, therefore, this issue has also been held against the appellant defendant. Issue No. 9 has been held against the appellant holding that on the day they entered into an agreement and possession was given to the plaintiff defendant. In that view of the matter, the suit was decreed, hence appeal.

Learned counsel for the appellant arguing the appeal urged that the appeal is barred by limitation in terms of Article 54 of the Limitation Act because the appeal could only be maintained within three years of the agreement. The agreement was made on 25.8.1972 and the suit was filed on 4.5.1979. Learned counsel for the defendant plaintiff submitted that there was no time limit fixed in the contract and thus, in terms of Article 54 of the Limitation Act, in view of the reply to the notice given by the defendant/appellant refused to execute the agreement. The limitation started and from the day the

execution was denied in reply to the notice, therefore, limitation started from that date only i.e. 26.3.1979 and the suit was filed on 4.5.1979. It was well within the limitation.

On this count, the facts are very simple and straight. Limitation was required to start from the date of refusal i.e. 26.3.1979 because no other date was fixed in the agreement. On the question of limitation, learned counsel appellant urged that the knowledge of the plaintiff was earlier when the appellant defendant sold the land to another purchaser. In this regard there is no specific evidence on record thus knowledge cannot be found established from any other date.

In that regard refusal has been established by the reply of the notice. It that view it can safely be stated that the question of limitation has been decided by the trial court. The agreement having been established and it is established that the amount has been paid and possession starts parted with the finding of other issues are not liable to be disturbed. There is no force. The appeal is dismissed.

(BHAGWATI PRASAD), J.

ns.